



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Lottery Department
VAC Chapter Number:	11 VAC 5-20-10 et seq.
Regulation Title:	Administration Regulations
Action Title:	Amend
Date:	03/17/2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The State Lottery Department is amending its Administration Regulations as follows: (i) to clarify the process for retailer licensing informal conferences and formal hearings; (ii) to move from this chapter to the proposed Lottery Game Regulations the requirement that certain winners participate in press conferences; (iii) to clarify the categories of approximate apportionment of lottery sales revenue; (iv) to clarify the requirement for ethics in public contracting; (v) to revise the schedule for external audits; (vi) to eliminate specific banking requirements from regulations; and (vii) to clarify board committee responsibilities. Procurement issues, included as a possible action in the Notice of Intended Regulatory Action, will be considered at a later date and are not addressed in this regulatory action.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 5, 2003, the State Lottery Board unanimously adopted these final regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the operation of a lottery, and to amend, repeal or supplement the regulations as necessary. Further, this section requires that regulations include, but not be limited to, advertisement of the lottery, apportionment of the total revenues accruing from the sale of lottery tickets, and other matters necessary for the efficient and economical operation and administration of the lottery. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulations and that they comport with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The final regulations will delete obsolete and unnecessary requirements and language, and will provide flexibility for the department to operate more efficiently and effectively in a timely manner. While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, these regulations have not been revised since 1996 and updating is necessary to coincide with current department operating procedures.

Contrary to the Notice of Intended Regulatory Action, procurement related revisions will not be included in this regulatory action, but will be considered at a later date.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The major revisions contain the following actions:

1. Clarify processes for informal retailer licensing conferences and formal hearings. Revisions (a) add the presumption that the appellant would receive written notice three days after it is mailed to his last known address; (b) provide that appeal request forms must be received by the department director rather than by a lottery employee or a department regional office; and (c) add that, by mutual agreement, the parties may extend the conference date beyond the 30-day time limit for informal conferences and the 45-day time limit for formal hearings.
2. Delete the provision from the “advertising” section that winners of certain jackpot or other top lottery prizes participate in press conferences to enhance the public’s winner awareness. That provision is moved to the Lottery Game Regulations.
3. Revise the approximate percentages and clarify the categories for the allocation of lottery revenues among prizes, retailer compensation, operating expenses and net income as determined by the lottery board.
4. Revise and simplify provisions related to ethics in public contracting to conform to those requirements in the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.
5. Require that external audits of the department be conducted annually rather than monthly, which has been the practice for several years.
6. Delete specific details regarding banking arrangements. These arrangements have been established with the concurrence of the State Treasurer and in accordance with applicable Treasury directives and are not required in department regulations.
7. Delete provisions that certain board committees may act on behalf of the board. All board committees are “advisory” only and make recommendations to the full board for its consideration and action. No committee acts on behalf of the board.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Amendments to the regulations will result in less burdensome and less intrusive requirements. They consist primarily of clarifying language, editorial changes, elimination of several unnecessary provisions and the elimination of requirements that the department is not required to follow.

The revisions represent no actual policy or procedural change to department operations. None of the revisions are controversial in nature, and no disadvantages to the public or to the Commonwealth are anticipated.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

One printing error in 11 VAC 5-20-160 B was corrected. No other changes were made to the text of the proposed regulations since their publication.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comment was received during the public comment period held from December 2, 2002 to February 14, 2003 or at the public hearing held on March 5, 2003.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

11 VAC 5-20-10 – Definitions of “conference officer” and “hearing” are revised to coincide with the Administrative Process Act; “contract,” “goods” and “services,” are revised to coincide with the Virginia Public Procurement Act. Because of bank mergers, the definition of “bank” is revised to eliminate the requirement that a bank’s principal place of business be located in the Commonwealth. “Immediate family” is added to specify those particular persons ineligible to purchase lottery tickets. “Instant ticket vending machine,” “personal interest” and “self-service terminal” are deleted because the terms are not used in the regulations. “Person” and

“transaction” are revised to coincide with statutory definitions in § 58.1-4009 and § 2.2-3101, respectively.

11 VAC 5-20-60 -- Language duplicative of that contained in the statute is eliminated. A provision is removed that required the department to approve the advertising materials of all lottery retailers. Language is deleted that required that lottery prize winners participate in press conferences and to permit the department to use winners’ names and prize amounts in public announcements. This provision was erroneously included in the “advertising” section of the regulations, and has been moved to the Lottery Game Regulations (discussion is contained in the background document for those regulations). The purpose of the release of winners’ names, etc., is not an advertising function.

11 VAC 5-20-70 – Unnecessary language in this section is deleted. (Paragraph C) – The regulation language regarding the apportionment of revenues has been revised to more clearly reflect the actual annual distribution of total moneys received from the sales of tickets and other sources. Approximate apportionment percentages, which may change from game to game as determined by the board, are allocated among prizes, retailer compensation, operating expenses and net income. (Paragraph F) - Specific reference to monthly audits of the department by the Auditor of Public Accounts is deleted. Currently, the APA conducts only annual audits of the department.

11 VAC 5-20-80 through 110 – Detailed language regarding bank/depository selection, etc., is deleted as unnecessary. The process occurs in accordance with State Treasury agreements and policies.

11 VAC 5-20-120 – The amendment provides flexibility for the timing of the election of officers of the board.

11 VAC 5-20-130 – Language is revised so that notice of a special board meeting will be given to the public contemporaneously with that provided to the board members. Conflict of interest language, also contained in sections 180 and 420, is removed because the provisions of the State and Local Government Conflict of Interest Act, contained in the Code of Virginia, apply to all Lottery employees and board members and it would be redundant to repeat the provisions in this regulation.

11 VAC 5-20-140 -- Because the committees of the board act in an advisory capacity only, language authorizing committees to act on behalf of the board is unnecessary and is deleted.

11 VAC 5-20-150 – Language regarding licensing actions that is duplicative of that contained in Section 160 is deleted. Also, the section clarifies that a formal hearing is conducted only upon the request of the appellant.

11 VAC 5-20-160 – The amendment clarifies the presumption that the appellant receives a written notice three days after the notice is mailed to the appellant’s last known address, which may be obtained from a retailer on-line survey or application form; and it clarifies that an appeal request form that is delivered by hand or mailed by the appellant to a department regional office

or a lottery sales representative must instead be received by the department director, as required by regulation.

11 VAC 5-20-170 and 180 -- Procedures for conducting informal fact finding licensing conferences and formal licensing hearings are revised to more closely coincide with requirements of the Administrative Process Act. It also is clarified that the request for a formal hearing should be addressed to the chairman of the lottery board at the headquarters address.

11 VAC 5-20-420 – Revisions state that the department will comply with the ethics in public contracting requirements of the Virginia Public Procurement Act and will be subject to the provisions of the State and Local Government Conflict of Interests Act. The revisions also delete unnecessary specific details previously contained in this section.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulations have no impact upon families.